

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/575,035

Applicant(s)

JERG, HELMUT

Examiner

STEPHEN KO

Art Unit

1714

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 March 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
b) ☐ They raise the issue of new matter (see NOTE below);
c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 22, 25-27 and 29-39.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: PTO-892 is attached.

/Michael Komakov/
Supervisory Patent Examiner, Art Unit 1792

/S.K./

Continuation of 3. NOTE: Claims 40 and 41 recite limitations "sound-damping layer surrounding the washing container, where the heat damping layer is disposed between the sound-damping layer and the walls of the washing container" and "the walls of the washing container forming the volume in which items to be washed are retained are at least partially configured as condensing surfaces made of a flexible material comprising a metal film having an aluminum component" respectively. The limitations were not previously presented, therefore, further consideration and/or search is required. New claims 40-41 are added. There is no cancellation of any claim finally rejected.

Continuation of 11. does NOT place the application in condition for allowance because: In response to applicant's argument that the modification proposed in the Office Action would not be readily determinable by those of ordinary skill in the art in view of the cited references. The Examiner's position is that it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, DE '567 teaches an insulation panel with variable heat conductivity (DE '567, title), which is reasonably pertinent to the particular problem with which the applicant was concerned. In response to applicant's argument about *In re Keller*. The Examiner's position is that the combination of DE '882 and DE '567 will be incorporated since one of ordinary skill in the art at the time the invention was made to modify the dishwasher of DE '882 to utilize a variable heat damping layer as mentioned in DE '567 instead of the variable heat damping layer of DE '882 to have a vacuum insulation, thus enhance insulation efficiency (General Knowledge). In response to applicant's argument that the combination of references cited in the Office Action is a product of improper hindsight. The Examiner's position is that it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, since DE '822 teaches a dishwasher comprising a heat damping layer and DE '567 teaches a heat damping layer, one of ordinary skill in the art at the time the invention was made to modify the dishwasher of DE '882 to utilize a variable heat damping layer as mentioned in DE '567 instead of the variable heat damping layer of DE '882 to have a vacuum insulation, thus enhance insulation efficiency (General Knowledge) (i.e. knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure). In response to applicant's argument that the Examiner does not provide any evidence to support the contention "an insulation efficiency of a vacuum insulation is higher than an insulation efficiency of a non-vacuum insulation". The Examiner's position is that according to Encyclopedia Britannica, there are three mechanisms for heat transfer (i.e. convection, thermal radiation, and conduction). Since convection and conduction are not available in vacuum, the heat transfer in vacuum is lower than the heat transfer in non-vacuum (i.e. the efficiency of vacuum insulation is higher than the efficiency of non-vacuum insulation). Regarding to the arguments to claims 40 and 41, the arguments are based on amendments, which are not entered.